IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RICHARD H.,
Appellant,

v.

SABRINA H., R.H., T.H., AND N.H.,
Appellees.

Nos. 2 CA-JV 2020-0035 and 2 CA-JV 2020-0036 (Consolidated)
Filed July 21, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Cochise County
No. SV201800020
The Honorable Terry Bannon, Judge

AFFIRMED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Appellant

Borowiec & Borowiec P.C., Sierra Vista
By Anne M. Borowiec
Counsel for Appellee Sabrina H.

Joel Larson, Cochise County Legal Defender
By Benna R. Troup, Assistant Legal Defender, Bisbee
Counsel for Minors

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 Richard H. appeals from the termination of his parental rights to his three children, R.H. (born April 2009), T.H. (born October 2010), and N.H. (born April 2014), on the grounds of abandonment and the deprivation of civil liberties due to a felony conviction. *See* A.R.S. §§ 8-533(B)(1), (4). He argues the evidence did not support either termination ground nor the juvenile court's finding that termination was in the children's best interests, and that his trial counsel was ineffective. We affirm.

¶2 Richard pled guilty in 2015 to luring a minor for sexual exploitation and was placed on a five-year term of probation and ordered to register as a sex offender.[1] Despite being repeatedly instructed that he was to have no contact with the victim as a term of his probation, he continued to have a sexual relationship with her.[2] His divorce from the children's mother, Sabrina H., was finalized in 2017. His probation was revoked in September 2018 due to his relationship with the victim, and he was sentenced to a two-year prison term. Sabrina H. then filed a petition to terminate Richard's parental rights alleging termination was warranted

[1] Richard committed the offense in 2012, when the victim was fourteen years old. She turned eighteen in 2016 and had a child with Richard in late 2017.

[2] It is not clear from the record before us whether the written probation terms initially provided to Richard prohibited him from having contact with the victim. In 2017, Richard sought "clarification" of that requirement, stating he had agreed not to have contact with the victim and had been informed that he was not to have contact with the victim, but claiming it was not specifically listed in his probation terms. The criminal trial court found it had advised Richard of that requirement at sentencing but nonetheless entered an order modifying probation to include that requirement.

under § 8-533(B)(1) because he had abandoned the children and under § 8-533(B)(4) because his conviction rendered him unfit to parent and his incarceration would deprive the children of a normal parental relationship with him.

¶3 After a contested severance hearing, the juvenile court concluded termination was warranted on both grounds alleged and was in the children's best interests. As to abandonment, the court noted that Richard had "fail[ed] to recognize the emotional toll his relationship with the victim has caused his children" and concluded that, "in his pursuit" of that relationship he had abandoned his children. The court also found that Richard had failed to "accept or respect" T.H.'s diagnoses of autism and hyperactivity and thus did not provide him the required "consistent and predictable environment." And the court noted Richard's "sporadic to non-existent" participation in therapy with R.H. and lack of any relationship with N.H. Last, the court observed that Richard had not provided any financial support to his children, even before he was incarcerated, and since then had sent no "cards, gifts or letters to his children."

¶4 As to termination under § 8-533(B)(4), the juvenile court discussed the ongoing effect Richard's sex-offender status would have on his ability to adequately parent his children. The court concluded his conviction demonstrated his "unfitness to have future custody and control" of his children. Regarding best interests, the court noted that the children had a "stable and secure" home with Sabrina and that domestic-relations orders and Richard's sex-offender status would prevent Richard from having contact with the children. It also found Richard's failure "to recognize the harm his relationship with the victim caused his children" would make an ongoing relationship a detriment to his children.

¶5 On appeal, Richard first challenges both bases for termination and the juvenile court's best-interests finding. To sever a parent's rights, the court must find clear and convincing evidence establishing at least one statutory ground for termination and by a preponderance of the evidence that terminating the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings because it "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14 (App. 2004). We will affirm the order if the findings upon which it

is based are supported by reasonable evidence. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view that evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶6 Richard argues the juvenile court erred in terminating his parental rights on the ground of abandonment, arguing his decision to pursue a "legal relationship" with the victim "does not constitute abandonment of his children as a matter of law." He also maintains that his "attitude towards [T.H.]'s autism diagnosis" cannot support an abandonment finding, that any lack of relationship with his children was due to Sabrina's interference, and that his efforts to provide support had been rebuffed and he was not obligated to provide financial support in any event.

¶7 A parent abandons a child when that parent fails "to provide reasonable support and to maintain regular contact with the child, including providing normal supervision." A.R.S. § 8-531(1). "Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment." *Id*.

¶8 Richard's argument on appeal ignores a critical facet of the juvenile court's abandonment finding—that he had not provided any support or had any contact with his children since his incarceration began well more than a year prior to the court's finding. He does not argue that fact alone is insufficient to support the court's finding. Nor does he cite authority supporting his apparent position that efforts by his family members to maintain contact or provide support for the children preclude an abandonment finding.[3] Arguments that are unsupported by legal authority and adequate citation to the record are waived. *See Melissa W. v. Dep't of Child Safety*, 238 Ariz. 115, ¶ 9 (App. 2015) (argument unsupported by authority is waived); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, n.6 (App. 2011) (failure to develop argument on appeal results in abandonment and waiver of issue). Thus, Richard has not demonstrated the court erred in terminating his parental rights on the ground of abandonment.

[3]Richard's parents sent partially illegible photocopies of letters to the children, purportedly from Richard, while Richard was incarcerated; the letters were not signed, and Sabrina testified they were not in Richard's handwriting.

¶9 To terminate Richard's parental rights pursuant to § 8-533(B)(4), the juvenile court was required to find he had been "deprived of civil liberties due to the conviction of a felony if the felony of which that parent was convicted is of such nature as to prove the unfitness of that parent to have future custody and control of the child" or that "the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years." Richard argues that termination was not warranted under § 8-533(B)(4) because his sex-offender status does not restrict his civil liberties "to the point that he cannot have a normal relationship with his children."

¶10 Richard appears to misread § 8-533(B)(4). That statute provides two distinct but related bases for termination. On the first basis, the parent must be deprived of civil liberties resulting from a felony conviction, and the nature of that felony must demonstrate parental unfitness. On the second, the parent must be deprived of civil liberties resulting from a felony conviction and a prison term must deprive the child of a normal home with the parent. Neither basis requires the court to find that the deprivation of civil liberties interferes with the parent's relationship with the child.

¶11 The juvenile court terminated Richard's rights under the first basis—concluding the nature of his felony conviction rendered him unfit to parent. Richard does not argue that he has not been deprived of civil liberties because of his felony conviction. Nor does he contest in his opening brief the court's determination that the nature of his felony demonstrates his lack of parental fitness.[4] *See In re Juv. No. J-2255*, 126 Ariz. 144, 146-47 (App. 1980) (prior molestation convictions "provided a rational inference" of parental unfitness). In short, Richard has not shown the court erred in terminating his parental rights under § 8-533(B)(4). *See Melissa W.*, 238 Ariz. 115, ¶ 9; *Christina G.*, 227 Ariz. 231, n.6.

¶12 Richard next complains that the juvenile court's best-interests finding was defective because the court incorrectly concluded his

[4]In his reply brief, Richard asserts, without elaboration or support, that "[t]he nature of [his] conviction is not such that supports a severance of his parental rights." We need not address arguments first raised in a reply brief, *see Marco C. v. Sean C.*, 218 Ariz. 216, n.1 (App. 2008), and Richard has failed to adequately develop the argument in any event, *see Melissa W.*, 238 Ariz. 115, ¶ 9; *Christina G.*, 227 Ariz. 231, n.6.

sex-offender status would prevent him from having contact with his children and improperly relied on the fact the domestic-relations order prohibited contact because "that order can be amended." He also argues there was no "allegation nor a finding that [he] is an unfit parent" and that the children would benefit from his continued presence in their lives because he would be a "father figure" and his "close extended family . . . love[s] his children and want to be with them and the feelings are reciprocated."

¶13 "[T]ermination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 13 (2018). And "[c]ourts must consider the totality of the circumstances existing at the time of the severance determination." *Id.*

¶14 We agree with Richard that his sex-offender status, standing alone, does not prevent him from having contact with his children. *See* A.R.S. §§ 13-3821 to 13-3825, 13-3727. But he overlooks that both bases for termination found by the juvenile court establish his parental unfitness. *See Alma S.*, 245 Ariz. 146, ¶ 10 (identifying termination on § 8-533(B)(1) and (B)(4) grounds as "proxies for parental unfitness"). And he has not developed any argument that the domestic-relations order is likely to be changed. *See Melissa W.*, 238 Ariz. 115, ¶ 9; *Christina G.*, 227 Ariz. 231, n.6.

¶15 The remainder of his argument is little more than a request that we reweigh the evidence, which we will not do. *See Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14. There was ample evidence to support the juvenile court's conclusions that Richard has failed to adequately address T.H.'s needs related to his autism and that he had harmed his relationship with his children by continuing his relationship with the victim in violation of his probation terms. And a child welfare consultant appointed to do a social study opined there was a risk Richard would molest his own children during a period of stress and, because he had not received any treatment for his conduct, was "still at risk for grooming other children," including his own. The juvenile court's best-interests finding is supported by the record.

¶16 Last, Richard argues he received ineffective assistance of counsel. He claims counsel improperly stipulated that two witnesses "should be designated [as] experts," and should have called additional witnesses, including him, to testify. This court has suggested that ineffective assistance of counsel in termination proceedings could, as a

matter of due process, constitute reversible error. *See John M. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 320, ¶¶ 17-18 (App. 2007); *In re Maricopa Cty. Juv. Action No. JS-4942*, 142 Ariz. 240, 242 (App. 1984). A criminal defendant raising a claim of ineffective assistance must demonstrate "both that counsel's representation fell below prevailing professional norms and that a reasonable probability exists that, but for counsel's errors, the result of the proceeding would have been different." *John M.*, 217 Ariz. 320, ¶ 8 (citing *Strickland v. Washington*, 466 U.S. 668, 690 (1984).

¶17 Assuming, without deciding, that the same standard applies here, Richard has not met this burden. He does not develop any argument or cite any authority in support of his argument that counsel should not have stipulated to the expertise of the counselor witnesses. Nor has he developed any argument that counsel's decisions as to which witnesses to call were anything but reasoned tactical decisions. *See State v. Denz*, 232 Ariz. 441, ¶ 7 (App. 2013) (reasoned tactical decision by counsel cannot support claim of ineffective assistance); *see also Melissa W.*, 238 Ariz. 115, ¶ 9; *Christina G.*, 227 Ariz. 231, n.6.

¶18 We affirm the juvenile court's order terminating Richard's parental rights to R.H., T.H., and N.H.